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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,397

04/13/2007

John Hatrick-Smith

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EXAMINER

WENDELL, MARK R

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,397	<b>Applicant(s)</b> HATRICK-SMITH, JOHN	
	<b>Examiner</b> MARK R. WENDELL	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner notes that the phrase "can be supported" is not a positive limitation. It appears as if the applicant would like the supporting limitation to be positive and therefore the claims have been examined as such; however the claim language should be altered to positively claim the limitation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiedmeier (US 4423528) in view of Ingram et al. (US 6895609). Wiedmeier illustrates in Figure 10 a shower wall liner panel including panel sections (43A-C) on either side of a fold. The reference, however, does not distinctly disclose an integrally formed

Art Unit: 3635

formation which can house shelves, soap dishes, etc. Ingram illustrates in Figure 1 a one-piece molded wall liner with a fold line in the corner and formations formed on each side of the fold line that house shelving. It would have been obvious to one having ordinary skill in the art at the time of invention to include formations and shelving on the wall liner structure for ease of storage and use by an inhabitant to the shower.

Regarding claim 7, it is well-known in the art that bathtubs and shower wall panels are made from a thermoplastic material for easy cleaning and durability. The examiner notes that Wiedmeier teaches the panels being made of molded fiberglass. It is well-known in the art that fiberglass and thermoplastics are interchangeable. Both exhibit similar waterproofing and tight seal properties. The examiner notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416).

Claims 2-5 and 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiedmeier (US 4423528) in view of Campe (US 5070549). It is described above what is disclosed by Wiedmeier. The reference, however, does not distinctly disclose opposing, integrally formed formation which can house shelves, soap dishes, etc. Campe illustrates in Figure 2 a plastic, molded wall liner with a fold line in the corner and opposing formations formed on each side of the fold line that house shelving, soap dishes, etc. It would have been obvious to one having ordinary skill in the art at the time

Art Unit: 3635

of invention to include formations and shelving on the wall liner structure for ease of storage and use by an inhabitant to the shower. The examiner notes that it is well known to have these items within a plastic shower.

Regarding claims 3-5 and 8, it is described above what is disclosed by Wiedmeier. The reference even illustrates in Figure 10 the shower assembly having 3 panels with 2 fold points. However, the reference does not teach a shelf or basket, soap dish, rail, or step formed within the non-planar formations in the fold corner section. Campe illustrates in Figure 3 an integral, plastic shelf and soap dish combination formed into a corner of a shower assembly, much like the one in Wiedmeier. It would have been obvious to one having ordinary skill in the art at the time of invention to include the soap dish and shelf combination of Campe into the corner assembly of Wiedmeier in order to make the shower assembly more aesthetically pleasing and practical.

Regarding claims 9-11 and 13-14, the method of forming the invention would be obvious given the structure described above of Wiedmeier in view of Campe.

Regarding claim 13, the examiner notes that molded fiberglass is thermoformed. Heat is generally used to cause a chemical reaction which sets the shape of the fiberglass part. All fiberglass products are thermoset.

Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiedmeier (US 4423528) in view of Campe (US 5070549) as applied to claims 2 and 9

Art Unit: 3635

above and in further view of Salach (US 5671489). It is described above what is disclosed by Wiedmeier in view of Campe; however regarding claims 6 and 12 the references do not disclose a handrail connected to the wall panels. Salach illustrates in Figure 1 and discloses in column 3, lines 61-62 a handrail mounted to two wall sections. It would have been obvious to one having ordinary skill in the art at the time of invention to have included the handrail of Salach to the wall panel structure of Wiedmeier in view of Campe in order to provide better stability for people in the shower.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK R. WENDELL whose telephone number is

Art Unit: 3635

(571)270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/  
Supervisory Patent Examiner, Art  
Unit 3635

/M. R. W./  
Examiner, Art Unit 3635  
January 27, 2009